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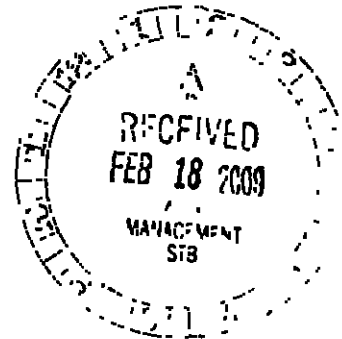
Tonya W. Conley  
Assistant General Attorney

February 18, 2009

By Facsimile

The Honorable Anne Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S W.  
Washington, D.C. 20423-001

**FILED**  
FEB 18 2009  
SURFACE  
TRANSPORTATION BOARD

Re: STB Finance Docket No. 35219; Petition for Declaratory Order

Dear Secretary Quinlan:

Enclosed for filing in the above referenced matter is the REDACTED Petition for Declaratory Order. We have submitted under separate cover a HIGHLY CONFIDENTIAL version of the petition.

Please direct any questions about this filing to me at (402) 544-3015 or twconley@up.com.

Thank you for your assistance.

Sincerely,

  
Tonya Conley

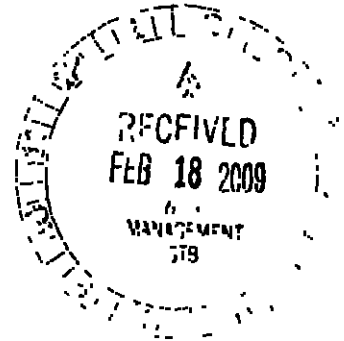
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SURFACE  
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**EXPEDITED HANDLING REQUESTED**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



**STB Finance Docket No. 35219**

**FILED**

**FEB 18 2009**

**SURFACE  
TRANSPORTATION BOARD**

**PETITION OF UNION PACIFIC RAILROAD COMPANY  
FOR A DECLARATORY ORDER**

**ENTERED  
Office of Proceedings**

**FEB 18 2009**

**Part of  
Public Record**

**J. MICHAEL HEMMER  
TONYA W. CONLEY  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, Nebraska 68179  
Telephone: (402) 544-1658  
Fax: (402) 501-3393**

***Attorneys for  
Union Pacific Railroad Company***

**Filed: February 18, 2009**

**FEE RECEIVED**

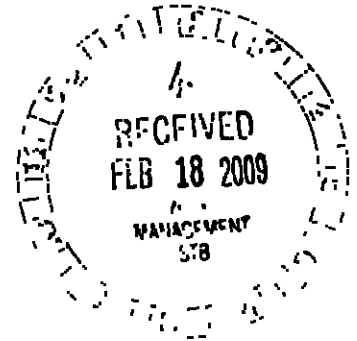
**FEB 18 2009**

**SURFACE  
TRANSPORTATION BOARD**

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**EXPEDITED HANDLING REQUESTED**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



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**STB Finance Docket No. 35219**

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**PETITION OF UNION PACIFIC RAILROAD COMPANY  
FOR A DECLARATORY ORDER**

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**INTRODUCTION**

Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, Union Pacific Railroad Company ("UP") hereby petitions the Board to clarify the extent of UP's common carrier obligation with regard to transporting chlorine, a Toxic Inhalation Hazard ("TIH"). We seek guidance about our obligation to quote rates for new, lengthy movements of chlorine in situations where the transportation would require movement through several High Threat Urban Areas ("HTUAs")<sup>1</sup> and other large communities to destinations where an ample supply of chlorine is available from nearby sources. Rail or pipeline transportation from a much closer source of chlorine would not subject the public or rail workers to unnecessary risks associated with movements from much more distant sources.

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<sup>1</sup> As defined by the Transportation Security Administration at 49 C.F.R. Section 1580.3. These areas are also referred to as "High Density Population Areas."

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UP respectfully requests expedited handling of this petition to address a recent request from a customer for common carriage rates for the movement of chlorine over distances of more than 1,400 miles. The shipper requests rates from \_\_\_\_\_, to Houston, TX, Dallas, TX, Allemania, LA, and Plaquemine, LA. Each of these destinations has ample sources of chlorine available far closer than the 1,400 to 2,000 miles UP would be required to transport this TIH.

We declined to quote rates pending the outcome of this proceeding. Obviously, if UP were concerned first and foremost with its private economic interests, it would encourage these long shipments. Other governmental agencies, however, have pressed us to find ways to reduce TIH transportation risks. As a responsible public citizen, we concluded that those considerations should prevail. We seek the STB's views on our decision.

**STATEMENT OF FACTS**

Union Pacific received a request for common carriage rates for the transportation of chlorine from \_\_\_\_\_, to \_\_\_\_\_ destinations. UP quoted rates to \_\_\_\_\_ of the destinations in accordance with its common carrier obligation. UP declined to quote rates to Houston, TX; Dallas, TX, Allemania, LA; and Plaquemine, LA. All four of these destinations are located within 300 miles of ample alternate chlorine supplies. Three of them are quite close to production facilities. Further, despite previously having rail rates available, the customer has shipped a total of one car to these four destinations within the last year.

UP declined to quote chlorine rates to Houston, TX; Dallas, TX; Allemania, LA, and Plaquemine, LA, because each of these destinations has ample supplies of chlorine located in close proximity. Transportation from the alternate sources of chlorine would involve fewer miles, less en route switching, and passage through fewer HTUAs. If sourced in \_\_\_\_\_, UP would

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have to transport the chlorine to Allemania, LA, or Plaquemine, LA, an average of 1,900 miles through two HTUAs and several other large cities. Allemania and Plaquemine both are within 70 miles of chlorine sources that could be accessed by rail without routing through any HTUAs. With respect to the Texas destinations, the shipper would require UP to move chlorine an average of 1,500 miles through two HTUAs and other cities. Both Houston, TX and Dallas, TX, have sources of chlorine within 300 miles. In Houston, the sources are located right in the metropolitan area. Neither would require transport through other HTUAs and large cities.

UP transports TIH commodities and many other hazardous materials safely and efficiently every day over some of the best maintained track in the world, and the risk of an accident is low. Nevertheless, UP's route system passes through some of the most densely populated cities in the country. Neither UP nor any other railroad has a route structure that would allow these shipments to avoid HTUAs.

**ARGUMENT**

UP respectfully submits that the public interest underlying the railroads' common carrier obligation does not support unnecessarily exposing the millions of people in HTUAs in the requested routings (Salt Lake City, UT, Kansas City, KS/MO; and Fort Worth, TX) and other large cities to remote, but deadly, risks. The risk of potential exposure from long distance shipments of chlorine is entirely unnecessary when a much closer source of chlorine is available. Transportation by rail is safe, but the longer chlorine is in transit and the more switching and handoffs that are required, the higher the number of people put at risk and the greater the exposure to terrorist attacks that worry government security agencies. Only a year ago, the Transportation Security Administration and the Federal Railroad Administration facilitated

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meetings with railroads and shippers to reduce unnecessary TIH shipments in order to reduce exposure to terrorist attacks. The common carrier obligation should not counteract those governmental efforts. When there are other, much better alternatives, the public interest should encourage their use.

UP understands the importance of its role in safely transporting chlorine. UP wants to comply with its common carrier obligation, but needs clarification of whether a shipper has an unlimited right to ship TIH wherever it chooses without considering the safety of the employees and the public who would be put at risk unnecessarily in light of demonstrably better alternatives.

**CONCLUSION**

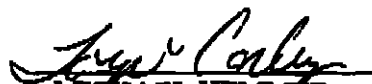
In order to guide UP in fulfilling its common carrier obligation, the Board should issue an order clarifying the extent of the common carrier obligation when the requested transportation:

- has not been used recently;
- would displace much closer sourcing options; and
- increases safety and security risks to employees and the public.

Because an order requiring UP to publish rates for such movements appears to conflict with TSA and FRA policies, UP urges the Board to consult with those agencies before ruling on this petition.

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Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. Michael Hemmer", written over a horizontal line.

**J. MICHAEL HEMMER**

**TONYA W. CONLEY**

**Union Pacific Railroad Company**

**1400 Douglas Street**

**Omaha, Nebraska 68179**

**Telephone: (402) 544-1658**

**Fax: (402) 501-3393**

*Attorneys for*

*Union Pacific Railroad Company*

**February 18, 2009**

**VERIFICATION**

My name is **DIANE DUREN**. I am Vice president & General Manager-Chemicals of Union Pacific Railroad Company.

I declare under penalty of perjury that the facts set forth in the foregoing Petition for Declaratory Order are true and correct. Further, I certify that I am qualified and authorized to file this testimony.

Executed on this 13<sup>th</sup> day of February 2009.

A handwritten signature in black ink, reading "Diane K. Duren", is written over a horizontal line.

**Diane Duren**



**REDACTED: TO BE PLACED ON PUBLIC FILE**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Petition for Declaratory Order was served by first class mail on the 18th day of February, 2009 on the following parties:

**Transportation Security Administration:**

Office Name – TSA-2  
Transportation Security Administration  
801 South 12th Street  
Arlington, VA 20598

**Department of Justice:**

National Security Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**Federal Railroad Administration:**

Federal Railroad Administration  
Mail Stop 10, 3rd Floor  
1200 New Jersey Ave., S E.  
Washington, DC 20590

**Brotherhood of Locomotive Engineers and Trainmen:**

Mr. Edward W. Rodziewicz  
National President - BLET  
1370 Ontario Street  
Cleveland, OH 44113-1702

**United Transportation Union:**

Mr. M.B. Futhy, Jr.  
International President – UTU  
14600 Detroit Avenue  
Cleveland, OH 44107



Tonya W. Conley